

# WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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State of Wisconsin  
Before the Dentistry Examining Board

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In the Matter of Disciplinary Proceedings Against

Thomas K. Cain, Jr., D.D.S.  
Respondent  
Case No. 94 DEN 111

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FINAL DECISION AND ORDER

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The parties to this action for purposes of s. 227.53, Stats., are:

Thomas K. Cain, Jr., D.D.S.  
419 Pleasant Street  
Suite 305  
Beloit WI 53511

Dentistry Examining Board  
Department of Regulation and Licensing  
P.O. Box 8935  
Madison WI 53708

Division of Enforcement  
Department of Regulation and Licensing  
P.O. Box 8935  
Madison WI 53708

The parties in this matter agree to the terms and conditions of the attached stipulation as the final decision of this matter. Accordingly, the Board adopts the Stipulation and makes the following:

### FINDINGS OF FACT

1. Thomas K. Cain, D.D.S., was born on April 14, 1953, and was first licensed to practice dentistry in Wisconsin pursuant to license number 2110, granted June 27, 1978.
2. Prior to September 1994, Respondent utilized a restraint method known as "hand over mouth" to control the behavior of some difficult pediatric patients, when verbal commands had proven to be insufficient with those particular patients.

3. Respondent did not routinely consult with or inform the parents of pediatric patients regarding the use of the "hand over mouth" restraint before using the restraint method, and did not routinely inform parents of pediatric patients on whom he had applied the restraint that he had used the restraint.

#### Conclusions of Law

1. The Dentistry Examining Board has jurisdiction in this matter pursuant to s. 447.07(3), Stats.
2. The use of any restraint or treatment on any pediatric patient without advance informed consent of the child's parent or guardian is a practice which substantially departs from the standard of care ordinarily exercised by a dentist, which could harm a patient, and violates s. DE 5.02(5), Wis. Admin. Code.

#### Order

Now, therefore, it is ordered that Thomas K. Cain be and hereby is reprimanded for failing to obtain the informed consent of the parents or guardians of his pediatric patients to his use of "hand over mouth" restraint.

It is further ordered that Thomas K. Cain shall pay partial costs of this proceeding, in the amount of \$250.00, to the Department of Regulation and Licensing within 60 days of the date of this order, pursuant to s. 440.22, Stats.

Dated this 6th day of March, 1996.

Wisconsin Dentistry Examining Board



A Member of the Board

State of Wisconsin  
Before the Dentistry Examining Board

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In the Matter of Disciplinary Proceedings Against

Thomas K. Cain, D.D.S.  
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Stipulation

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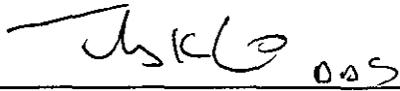
It is hereby stipulated between Thomas K. Cain, D.D.S., personally and on his own behalf, and James E. Polewski, Attorney for the Division of Enforcement, Department of Regulation and Licensing, as follows:

1. This stipulation is entered in resolution of the pending proceedings concerning Dr. Cain's license. The Stipulation and the proposed Final Decision and Order shall be presented directly to the Dentistry Examining Board for its consideration and adoption.
2. In resolution of these proceedings, Dr. Cain consents to the entry of the attached Final Decision and Order.
3. Dr. Cain is aware of and understands each of his rights, including:
  - the right to a hearing on the allegations against him, at which the state would have the burden of proving the allegations by a preponderance of the evidence,
  - the right to confront and cross-examine the witnesses against him,
  - the right to call witnesses on his own behalf and to compel their attendance by subpoena,
  - the right to testify himself,
  - the right to file objections to any proposed decision and to present briefs or oral arguments to the officials who are to render the final decision,
  - the right to petition for rehearing,
  - the right to be represented at every stage of the proceeding, including the making of any stipulation, by an attorney of his choosing, at his own expense,
  - all other rights afforded to him under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes and the Wisconsin Administrative Code.

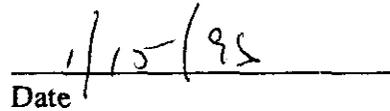
4. Dr. Cain is aware and understands that by signing this stipulation he voluntarily and knowingly waives the rights set forth in paragraph 3 above, and does voluntarily and knowingly waive those rights.

5. If the terms of this stipulation are not acceptable to the Board, the parties shall not be bound by the contents of this stipulation, and the matter shall be returned to the Division of Enforcement for further proceedings. In the event that this stipulation is not accepted by the Board, the parties agree not to contend that the Board has been prejudiced or biased in any manner by the consideration of this attempted resolution.

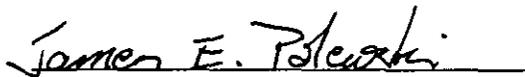
6. The parties to this stipulation agree that the attorney for the Division of Enforcement and the member of the Dentistry Examining Board assigned as an advisor in this investigation may appear before the Board for the purpose of speaking in favor of this agreement and answering questions that the members of the Board may have in connection with their deliberations on the stipulation.



Thomas K. Cain, D.D.S.



Date



James E. Polewski  
Attorney  
Division of Enforcement



Date

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## NOTICE OF APPEAL INFORMATION

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**Notice Of Rights For Rehearing Or Judicial Review, The Times Allowed For Each, And The Identification Of The Party To Be Named As Respondent.**

**Serve Petition for Rehearing or Judicial Review on:**

STATE OF WISCONSIN DENTISTRY EXAMINING BOARD

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1400 East Washington Avenue

P.O. Box 8935

Madison, WI 53708.

**The Date of Mailing this Decision is:**

March 7, 1996

### **1. REHEARING**

Any person aggrieved by this order may file a written petition for rehearing within 20 days after service of this order, as provided in sec. 227.49 of the *Wisconsin Statutes*, a copy of which is reprinted on side two of this sheet. The 20 day period commences the day of personal service or mailing of this decision. (The date of mailing this decision is shown above.)

A petition for rehearing should name as respondent and be filed with the party identified in the box above.

A petition for rehearing is not a prerequisite for appeal or review.

### **2. JUDICIAL REVIEW.**

Any person aggrieved by this decision may petition for judicial review as specified in sec. 227.53, *Wisconsin Statutes* a copy of which is reprinted on side two of this sheet. By law, a petition for review must be filed in circuit court and should name as the respondent the party listed in the box above. A copy of the petition for judicial review should be served upon the party listed in the box above.

A petition must be filed within 30 days after service of this decision if there is no petition for rehearing, or within 30 days after service of the order finally disposing of a petition for rehearing, or within 30 days after the final disposition by operation of law of any petition for rehearing.

The 30-day period for serving and filing a petition commences on the day after personal service or mailing of the decision by the agency, or the day after the final disposition by operation of the law of any petition for rehearing. (The date of mailing this decision is shown above.)